

FEDERAL COMMUNICATIONS COMMISSION

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Anderson Radio Broadcasting, Inc.
581 North Reservoir Road
Polson, MT 59860

In re: KZXT(FM), Hungry Horse, MT
Facility ID #164302
Anderson Radio Broadcasting, Inc. ("ARB")
BMPH-20080904ABB

Dear Applicant:

This is in reference to: (1) the above-captioned minor change application, as amended on June 15, 2009, to modify the community of license ("CofL") from Eureka, MT on Channel 228C2 to Hungry Horse, MT on Channel 230C2 and also proposes to change the effective radiated power, transmitter site, antenna height, and antenna; and (2) the May 6, 2009 Commission letter indicating 47 C.F.R. Section 73.3573(g)(1), (2), and (4) violations with respect to the proposed facilities on Channel 230C3 at Evergreen, MT.¹

Background. This application, as amended, was filed pursuant to Section 73.3573(g)(1) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in a preferential arrangement of allotments.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ This application would provide a first local service to Hungry Horse under Priority (3).

¹ The May 6, 2009 Commission letter stated that the application contained the following deficiencies: (1) the proposal failed to demonstrate that the proposed CofL change constituted a preferential arrangement of allotments or assignment under Section 307(b) of the Communication Act of 1934, as amended (47 U.S.C. Section 307(b)); (2) the proposed facilities on Channel 230C3 at Evergreen, MT were not mutually exclusive with the original allotment on Channel 228C3 in Eureka, MT; and (3) the proposal did not demonstrate the existence of a suitable assignment site.

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

ARB requests to change the CofL for Station KZXT to provide a first local service at Hungry Horse, MT on Channel 230C2 in lieu of Eureka, MT on Channel 228C2. ARB states that Hungry Horse is a Census Designated Place (“CDP”), which is located in Flathead County, Montana with a 2007 population of 1,085 persons.⁴ ARB also indicates that its proposal does not result in the loss of actual service to Eureka because the Station KZXT facility at Eureka has not yet been built. As such, ARB contends that its proposal constitutes a preferential arrangement of allotments since Hungry Horse is a licensable community deserving of a first local service. In addition, ARB contends that the proposed site, as amended, is short-spaced to the Eureka, MT Class C2 allocation site by more than 13 kilometers and is therefore compliant with Section 73.3573(g)(2).⁵

Discussion. We cannot make the requisite finding that the reallocation of Station KZXT to Hungry Horse constitutes a preferential arrangement of allotments as required by *Community of License*. Specifically, ARB states that Hungry Horse has a 2007 population of 1,085 persons while Eureka has a 2007 population of 1,010 persons. In this regard, ARB provides no authoritative source for the changed 2007 population figures for both Hungry Horse and Eureka. The Commission traditionally relies on the most current U.S. Census figures for community population statistics, absent compelling information to the contrary.⁶ According to the 2000 U.S. Census, Hungry Horse has a population of 934 persons while Eureka has a population of 1,017 persons. Accordingly, we conclude that a first local service at Eureka is preferred over a first local service at Hungry Horse since Eureka has a larger population than Hungry Horse, according to the 2000 U.S. Census reports.⁷

Moreover, we also conclude that the application, as amended, remains in violation of 47 C.F.R. Section 73.3573(g)(2). As stated in the May 6, 2009 Commission letter, an applicant proposing to change the CofL via a minor change application must specify facilities at the proposed CofL that are mutually exclusive with the applicant’s assignment, in the case of a winning auction bidder. Since this application is unlicensed and has not built its current permitted facilities, the applicant must be mutually exclusive with its original allotment⁸ on Channel 228C3 in Eureka, MT.⁹ Our engineering study indicates that the

⁴ Additionally, Hungry Horse is located between two forks of the Flathead River. Hungry Horse is identified as a community by local residents and governments (county, state, and federal). It has a number of businesses, churches, recreation providers, facilities, districts, and areas that contain Hungry Horse within their names, such as Hungry Horse Corral Gift Shop, Hungry Horse Hotel, Hungry Horse Liquor Store, Hungry Horse Supermarket, Hungry Horse Chapel, Hungry Horse Baptist Church, Hungry Horse Campground, and Hungry Horse Ranger District of the U.S. Forest Service.

⁵ Construction permit BMPH-20080506ABN to serve Eureka, MT on Channel 228C2, was granted on May 30, 2008.

⁶ See *Blanchard, Louisiana and Stephens, Arkansas*, Report and Order, 8 FCC Rcd 7083 (MMB 1993), *recon. denied*, Memorandum Opinion and Order, 10 FCC Rcd 9828 n. 12 (1995) (absent an alternative authoritative source of population data, we have traditionally relied and will continue to rely on Census figures in the implementation of our rules); see also, *Sparta and Buckhead, Georgia*, Report and Order, 15 FCC Rcd 21536 (MMB 2000).

⁷ See *West Liberty and Richwood, Ohio*, Report and Order, 6 FCC Rcd 6084 (MMB 1991); *Three Oaks and Bridgman, Michigan*, Report and Order, 5 FCC Rcd 1004 (MMB 1990); *Clarksville and Lanesville, Indiana*, Report and Order, 4 FCC Rcd 4968 (MMB 1989).

⁸ See *Revision of Procedures Governing Amendments to FM Table of Allotments and changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (“Any application proposing a community change of license change filed by a permittee that has not built its current permitted facilities and that is not mutually exclusive with either the applicant’s built and operating facilities or its original allotment shall be returned as unacceptable for filing”)

proposed facilities on Channel 230C2 in Hungry Horse, MT are not mutually exclusive with the original allotment on Channel 228C3 in Eureka, MT. The required spacing pursuant to Section 73.207 is 56 kilometers while the actual spacing proposed in the application is 66 kilometers. The amendment, therefore, fails to eliminate the problem which resulted in the dismissal of the original application.

Furthermore, the May 6, 2009 Commission letter to ARB stated that "the applicant must file an amendment to demonstrate compliance with Section 73.3573(g)(1), (2), and (4). In addition, it stated that pursuant to 47 C.F.R § 73.3522, "...an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally, 47 C.F.R. § 73.3564 states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. The May 6, 2009 letter provided ARB its 30 day period to submit a corrective amendment pursuant to 47 C.F.R. § 73.3522. Application BMPH-20080904ABB remains in violation of 47 C.F.R. Section 73.3573(g)(1) and (2), is unacceptable for filing after the one opportunity for corrective amendment, and will be dismissed.

Conclusion. In light of the above, application BMPH-20080904ABB is unacceptable for filing and IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Anne Thomas Paxson, Esq.
Garrett G. Lysiak, P.E.

⁹ The coordinates for the assignment in Eureka, MT on Channel 228C3 are 48° 52' 54" N.L., 115° 02' 54" W.L. (NAD 27).